IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 21 OF 2002.

Shri Ulhas N. Naik,
resident of Durgawadi,
Taleigao, Ilhas, Goa. ... Petitioner.

VERSUS

1. M/s. Kadamba Transport Corporation Limited, through Managing Director, having office at Bus Terminus Complex, Panaji, Goa.

2. The State Officer (Officer on Special Duty), Kadamba Transport Corporation Ltd. Panaji, Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioner.

Mr. A.R. Kantak, Advocate for the Respondent No.1.

CORAM: V. C. DAGA, J.

DATE: 6TH JUNE, 2002.

ORAL ORDER:

Heard rival parties.

2. Perused record.

3. This petition is directed against the impugned Order dated 17.08.2001 passed by the District Judge, Panaji, in Civil Appeal No.3/1999, confirming the Order dated 2.9.1999 passed by the Officer on Special Duty and Estate Officer, Kadamba Transport Corporation Ltd., Panaji, Goa, whereby the eviction of the

petitioner was directed and the petitioner was called upon to pay a sum of Rs.2,51,254.27 by way of arrears of rent along with simple interest at the rate of 10% per annum with effect from 31.5.1999 till final payment and further rent till delivery of possession of the premises to the Corporation. The petitioner during pendency of the eviction proceedings delivered possession of the premises to the Corporation. The dispute now relates to the payment of arrears of rent only.

4. The solitary substantial contention raised that too for the first time before this Court in this Writ Petition is that no show cause notice was issued with respect to the recovery of the arrears of rent and quantum thereof, as contemplated under Section 10 of the Goa Public Premises (Eviction of Unauthorised Occupants) Act 1988 as such part of the order to the extent it directs recovery of rent for the period during which the petitioner was allegedly deprived of his right to run canteen is vitiated being in breach of principles of natural justice.

5. In order to appreciate the above contention, it is necessary to consider as to in what manner the petitioner had understood the show cause notice issued to him. In order to consider this aspect one has to

turn to his reply to the show cause notice dated 11.2.98 at Annexure 'N' to the petition. This reply to the said show cause notice is indicative of the fact that he had understood that the arrears of rent were being claimed from him. In reply to the show cause notice he pleaded his difficulty in the matter of payment of arrears. O.S.D. and Estate Officer considering his reply was pleased to grant some concession for infancy period. Under these circumstances, it cannot be said that the petitioner had no prior notice with respect to the demand for arrears of rent. In this view of the matter, Petitioner did not suffer any prejudice for want of specific show cause notice U/S.10 of the Act with respect to the demand for arrears of rent.

6. Apart from the above factual position, the learned counsel appearing for the respondent-Corporation brought to my notice a judgment of the Division Bench of this Court in **M/s. Kadamba Transport Corporation Ltd. v. Shri Sitakant G. Bhobe** and others reported in 1991(2) Goa L.T. 55, wherein this Court while considering pari materia provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 held that no separate show cause notice requiring the occupant to pay arrears of licence fee was necessary when the

action for eviction was based on the ground of non-payment of arrears of licence fee. In such a case notice of demand for arrears is always pregnant in the notice for eviction.

7. Mr. Sonak, learned counsel for the petitioner, tried to distinguish this judgment on facts, but considering the facts that petitioner had rightly and properly understood the extent of show cause notice of eviction and treated it to be a notice demanding arrears of rent, it is not necessary to go into this legal academic question.

8. So far as other contentions sought to be raised are concerned, all of them relate to the findings of fact recorded by both the Courts below. This Court not being a Court of Appeal, these contentions cannot be gone into in the writ jurisdiction of this Court.

9. For the reasons recorded, no case is made out warranting interference in writ jurisdiction of this Court. The Petition is therefore, dismissed in limine with no order as to costs.

(V. C. DAGA)

sl. JUDGE.